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ADVISORY OPINION 2024 – No. 2

Removal by Staff of Campaign Comments on Official Social Media Posts November 2024

The Board received a request for an Advisory Opinion on July 2, 2024 from John Handy, Director of Communications for the House Republican Caucus, who has waived confidentiality.

I. CONTENTS OF OPINION REQUEST

All four caucuses in the legislature use social media with which to communicate. The types of social media platforms vary depending on the caucus. The Senate and House social media policies state as follows: “Ethics laws prohibit the use of any legislative resource to support or oppose any candidate or ballot measure. Posts related to election campaigns will be removed.”

The caucuses have maintained social media posts for many years. There are thousands of comments that appear on the social media posts, some dating back many years. It presents a significant workload issue to go back through all these comments to find the noncompliant ones and remove them.

II. QUESTION

Does the Ethics Act require caucus staff to remove comments made by the public to social media posts that may be of a campaign nature?

III. OPINION

No. RCW 42.52.180 prohibits legislators and legislative staff from using public resources for campaign purposes. The Act does not provide the Board with jurisdiction over what the public may post in response to a caucus social media post.

IV. ANALYSIS

RCW 42.52.180 provides as follows: “No state officer or state employee may use or authorize the use of facilities of an agency [public resources], directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot measure.” In the situation presented by this Advisory Opinion request, no state officer or state employee is authorizing the use of public resources, directly or indirectly, for the purpose of assisting a campaign. Presumably, caucus staff is posting legitimate legislative material, and it is members of the public, not the staff, who post comments containing campaign material.

The Board’s jurisdictional statute, RCW 42.52.320, limits the Board’s authority to enforcing the Act “with respect to members and employees of the legislature.” The question presented in this Advisory Opinion request is about the content of comments posted by members of the public. While the Board would exercise its jurisdiction over an employee who posted campaign material on official social media, it lacks jurisdiction over what the public posts.

The Board’s opinion presumes that the original posts to social media made by caucus staff are appropriate and contain sufficient legislative nexus. The Board cautions caucus staff about social media posts that appear to intend to provoke campaign or partisan responses. As long as the original post is legitimate, caucus staff need not be concerned about public comments to those posts.

The Board also recommends that caucus communications staff include a disclaimer on social media posts that makes it clear that comments are the opinion of the person posting the comment and do not necessarily reflect the opinion of the caucus.

ON BEHALF OF THE LEGISLATIVE ETHICS BOARD, this opinion is signed this 7th day of November 2024.



Tom Hoemann, Chair